

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 11
)
LIVING WORDS FAITH CENTER, INC.) CASE NO. 04-91635-MHM
)
Debtor)

ORDER

Debtor's attorney, Schuyler Elliott ("Applicant") filed an interim application for payment of compensation in the amount of \$6,553.75 for the period from March 9, 2004, to July 19, 2004. Applicant also seeks reimbursement of expenses in the amount of \$188.45. Hearing was held August 30, 2004.¹

The record shows that this case was filed March 1, 2004, but Debtor's application to approve the employment of Debtor's attorney was not filed until May 7, 2004. A professional cannot recover fees for services rendered during the period before his employment was authorized. *In re Keller Financial Services of Florida, Inc.*, 248 B.R. 859 (Bankr. M.D. Fla. 2000); *Land West, Inv. v. Coldwell Banker Commercial Group, Inc. (In re Haley)*, 950 F. 2d 588 (9th Cir. 1991); *Frankfurth v. Cummins*, 15 B.R. 893 (9th BAP 1981); *In re Leek*, 128 B.R. 832 (Bankr. M.D. Fla. 1991); *In re Citrone Development Corp.*, 106 Bankr. 359 (Bankr. S.D.N.Y. 1989); *In re Willamette Timber Systems, Inc.*, 54 Bankr. 485 (Bankr. D. Ore. 1985). Such a limitation is intended to "deter attorneys from general nonobservance of §327." *In re Crook*, 79 Bankr. 475 (BAP 9th Cir. 1987). Where lateness in seeking Court approval of

¹ After entry of the Order and Notice of Hearing on the Application, Debtor's attorney filed amended applications for compensation seeking additional compensation. As those additional amounts were not included in the notice to creditors for the hearing held August 30, 2004, they could not be considered at the hearing. Debtor's attorney was instructed to prepare a separate application (probably the Final Application) addressing those additional amounts.

employment is a result of inexcusable or unexplained negligence, retroactive authorization should not be issued. *Id.* In the instant case, Debtor's attorney offered no satisfactory explanation for his failure to file a timely application for employment. The court will not assume the existence of exigent circumstances. Compensation of Debtor's attorney will be allowed, however, from the date the application for employment was filed. For time expended prior to that date, compensation will be allowed on a *quantum meruit* basis.

Debtor's attorney expended 17.55 hours prior to the date the application for employment was filed. Relying upon the principles set forth in *Norman v. Housing Authority of City of Montgomery*, 836 F. 2d 1292 (11th Cir. 1988), and upon the equitable principles of *quantum meruit*, compensation of Debtor's attorney will be allowed in the amount of \$2,517.50 for that period.

The time expended by Debtor's attorney after the employment application was filed equals 19.9 hours. Those services will be evaluated pursuant to the principles set forth in *Norman*, 836 F. 2d 1292. The value of a professional's services is determined by multiplying the number of hours reasonably expended by a reasonable hourly rate. That calculation results in the lodestar. The initial consideration in calculating the lodestar is that of a reasonable hourly rate, which is determined using the subjective factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5th Cir. 1974).¹ Based on this court's knowledge of prevailing market rates and an evaluation of the skill, experience and reputation of the Applicant,² the hourly rates which the Applicant seeks to charge are reasonable.

The other consideration in calculating the lodestar is hours reasonably expended. Hours

¹ *Bonner v. City of Prichard*, 661 F. 2d 1206 (11th Cir. 1981), renders decisions of the Fifth Circuit issued prior to September 30, 1981, binding precedent for the Eleventh Circuit.

² *See, Blum v. Stenson*, 456 U.S. 886, 104 S. Ct. 1541 (1984).

which would be unreasonable to bill to a client irrespective of the skill of counsel must be excluded. *Norman*, 836 F. 2d 1292. Although Debtor's attorney may have spent time in excess of what would be reasonable for an experienced Chapter 11 attorney, the relatively low hourly rate charged by Debtor's attorney offsets any such excess time. Additionally, the excellent result obtained in this case renders the number of hours expended reasonable.³

In conclusion, the Applicant's hourly rates and the hours expended in the instant case are reasonable. Therefore, the Applicant is entitled to compensation under 11 U.S.C. §331, in the amount of \$3,482.50, and on a *quantum meruit* basis in the amount of \$2,517.50, for total of \$6,000. Accordingly, it is hereby

ORDERED that the Applicant is allowed compensation in the amount of \$6,000. Reimbursement for expenses in the amount of \$188.45 is allowed.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, the U. S. Trustee, and all creditors and parties in interest.

IT IS SO ORDERED, this the 10th day of September, 2004.


MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

³ See, *Blanchard v. Bergeron*, 489 U.S. 87 (1989) and *Johnson v. Georgia Highway Express*, 488 F. 2d 714 (5th Cir. 1974). Re enhancement, see, *Blum v. Stenson*, 456 U.S. 886; *In re Flowers*, 178 BR 553 (Bankr. S.D. Fla. 1995)